

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2025-CP-07-01126
	)	
	)	
THE BIG HOUSE CEMETERY	)	
COMMITTEE, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	
THERESA AIGNER, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**PLAINTIFFS’ POST-HEARING  
SUPPLEMENTAL BRIEF IN SUPPORT  
OF MOTION FOR TEMPORARY  
INJUNCTION**

**INTRODUCTION**

This matter is before the Court on Plaintiffs’ Motion for a Temporary Injunction, heard by this Court on December 16, 2025, which seeks to enjoin Defendants’ obstructions of access to the Big House Cemetery (the “Cemetery”) along Everest Road and Everest Lane (“Everest”) on St. Helena Island, Beaufort County, South Carolina.<sup>1</sup> Following the Court’s December 16, 2025 hearing on Plaintiffs’ Motion and a site visit at the Cemetery and to Everest and Pope Estates Way on St. Helena Island immediately thereafter, the Court orally ordered the Parties to file briefs related to security, pursuant to Rule 65(c) of the South Carolina Rules of Civil Procedure, and ordered Plaintiffs to submit information to the Court related to their and other local community members’ past maintenance of Everest and the locked gate on Pope Estates Way on Plaintiff Sherike Bennett’s property, by January 5, 2026.

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<sup>1</sup> At the December 16, 2025 hearing, Plaintiffs confirmed their request for the Court convert their Motion for Temporary Restraining Order, filed on July 9, 2025, and supplemented on September 19, 2025, into a Motion for Temporary Injunction.

In response to the Court's post-hearing requests at the December 16 site visit and in further support of their Motion for Temporary Injunction, Plaintiffs timely provide the below information and attached written sworn testimony related to their proposed security of no more than \$1,000 to secure the temporary injunction, Plaintiffs' past efforts to maintain Everest, and the gate on Pope Estates Way.

### **I. SECURITY BOND**

Upon this Court's grant of Plaintiffs' Motion for a Temporary Injunction, Plaintiffs should be required to pay no more than \$1,000 to secure the injunction that requires Defendants' opening of the gates on Everest and that authorizes Plaintiffs, along with other local community members, to once again use Everest to access the Cemetery for maintenance of, visits to, and funerals at, the Cemetery. Specifically, given the complete lack of evidence in the record of damage to Everest caused by Plaintiffs' or local community members' use of Everest to access the Cemetery; Plaintiffs' past offers to redress any damage to Everest via cost-free or low-cost options; Defendants' wear of Everest through their own daily use of Everest; and Defendants' ability to open the gates without any financial burden to them, the proposed security amount is intended to help address potential—but unlikely—damage due to Plaintiffs' and other community members' use of Everest to access Cemetery.

Under subsection (c) of the South Carolina Rules of Civil Procedure 65, a security amount must be posted by the party awarded a temporary injunction before the court can issue the injunction, and the amount of security is based on damage that the enjoined party would incur if the injunction is later deemed to be wrongly entered:

Except in divorce, child custody and non-support actions where the giving of security is discretionary, **no restraining order or temporary injunction shall issue except upon the giving of security by the applicant**, in such sum as the court deems proper, for the **payment of such costs and damages as may be**

**incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.**

S.C.R.C.P. 65(c) (emphases added); *see also* *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 49–50 (Ct. App. 2009) (“[Security should] provid[e] an amount sufficient to protect [non-movants] in the event the injunction [i]s ultimately deemed improper.”); *cf. Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385 (Ct. App. 2001) (“Recovery under an injunction bond is limited to costs and damages incurred during the period of the temporary restraining order or temporary injunction.” (citing *Chambron v. Lost Colony Homeowners Ass'n*, 317 S.C. 43, 45 (Ct. App. 1994))).

Thus, the bond requirement is not discretionary and must be strictly interpreted. *See Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 609–10 (Ct. App. 2016) (“[O]ur appellate courts have interpreted Rule 65(c) strictly.”); *e.g., Pro. Wiring Installers, Inc. v. Sims*, No. 2008-UP-173, 2008 WL 9840409, at \*4 (S.C. Ct. App. Mar. 12, 2008) (“We find that if setting nominal bond is not within the discretion of the trial court, setting no bond is likewise beyond the trial court’s discretion.”).

Here, Plaintiffs have neither caused nor observed any damage or need for repair to Everest Road that they have caused. *Accord* Affidavit of George Brown, attached here as Exhibit A, ¶ 17 (attesting to absence of any problems raised by landowners on Everest concerning Plaintiffs’ and local community’s use of Everest to access the Cemetery or any issues with trash); *cf.* Affidavit of Plaintiff Sherike Bennett, attached as Exhibit B, ¶ 5 (“For as long as I can remember, we always used Everest . . .to access the cemetery.”). And Defendants have not submitted *any* testimony or any timely, admissible, or relevant documentary evidence of the same to this Court. *See* Defs.’ Late-Filed Opp’n to Pls.’ Mot. for TRO & PowerPoint (attaching unauthenticated photos purporting to show unidentified area of Everest Road several days after Plaintiffs’ access of Everest for funeral at Cemetery on March 30, 2024, and days after heavy rainfall). Moreover,

Defendants have ironically neglected to note *their own use* of Everest to access their residences—which, unlike Plaintiffs’ and other community members’ occasional use of Everest to visit the Cemetery over the past decades, is likely daily—and how they have likely contributed to any wear of Everest themselves. *See generally id.* Accounting for these factors, equity, fairness, and logic command that Plaintiffs’ security must not be based on *all* potential damage to Everest during the pendency of the injunction, given the extreme unlikelihood of damage caused by Plaintiffs—or by Plaintiffs alone—during the injunction period.

In addition, as observed by the Parties and the Court at the December 16, 2025 site visit to the Cemetery and to Everest, both of the gates erected by Defendants on Everest have keypad locks that can be unlocked by a code. Site Visit to the Big House Cemetery, Dec. 16, 2025. Thus, security would not be required to cover any expenses or costs incurred by Defendants to remove or alter the gates along Everest to allow access; Defendants can remove the keypad or provide the code to Plaintiffs and other local community members who wish to access the Cemetery. *Id.*

Accordingly, as a matter of equity, any security that this Court requires Plaintiffs to post before granting the requested temporary injunction should be based on an amount sufficient to address any damage of Everest due to Plaintiffs’ and other local community members’ use of Everest for occasional visits with loved ones buried in the Cemetery and for funerals and clean-up days at the Cemetery during the injunction period. As set forth below, Plaintiffs base their proposed amount of this security on their and other community members’ past efforts to care for Everest, for which they did not incur monetary expenditures; Mr. Brown’s offer to help alleviate flooding on Everest; and research conducted by the undersigned Plaintiffs’ counsel with regional businesses specializing in road erosion control.

A. Plaintiffs' and the Local Community's Past Efforts to Maintain Everest

According to Plaintiff the Big House Cemetery Committee member and longtime St. Helena resident George Brown, Plaintiffs and other local community members have made efforts over the years to help care for and maintain Everest, which they have used for decades to access the Cemetery. Affidavit of Georgie Brown, attached as Exhibit A, ¶¶ 7-9. Specifically, to not damage the road, Plaintiffs would avoid driving on Everest, a dirt road, after heavy rains that muddied the road. *Id.* ¶ 14. They also would mow the grass with their own equipment, and pick up trash, along Everest on clean-up days and before funerals. *Id.* ¶ 14. They incurred no cost for this maintenance, as they would use their own equipment. *See id.* ¶ 12.

Additionally, although Defendant Aigner reportedly declined the offer, towards the end of 2023 Mr. Brown offered to put in a drainage pipe on Everest, and to purchase gravel to fill in the ruts and low spots on Everest, to help with the flooding on the road. *Id.* ¶ 16. Costs for the drainage pipe and gravel were approximately \$300, and Mr. Brown offered to do the work to install the pipe and lay the gravel himself, free of charge. *See id.* ¶ 17.

B. Approximate Estimates for Professional Road Erosion Control

In early January 2026, Plaintiffs' counsel contacted The Erosion Company, Greenrise, EcoExpress Hydroseeding and Erosion Control, and ARE Land Management, all of which specialize in erosion control, among other landscaping services, in North Carolina, South Carolina and/or Georgia, to obtain quotes for road erosion services on Everest, which is composed of dirt and floods when it rains. *See* Affidavit of Emily Early, attached as Exhibit C, ¶¶ 2-4; *see also* Brown Aff., Ex. A, ¶¶ 14, 17. Professional road erosion control redresses soil loss from roadways, which is caused by natural causes like water runoff and is accelerated by human use. *Accord* ARE

Land Mgmt., *Service: Erosion Control*, <https://arelandmanagement.com/services/erosion-control> (last accessed Jan. 5, 2026).

The process can include a range of services, supplies, and products, depending on the grading of the land, traffic on the road, type of dirt, and goals for the erosion on Everest, which is about 1 mile in length and a car-width wide. *See* Early Aff., Ex. C, ¶4; *see* Verified Am. Compl. ¶ 84, Map #1 (apply measuring scale on map). Specifically, on the lower-cost end, road erosion control can include about 2 days of work for the laying of SB1 matting, intended to aid with drainage in wet areas; hydroseed, which is mulch mixed in with slurry (thick mixture of dense solids) and grass seed fertilizer, that sticks to the ground, grows grass, and holds dirt together; and a drainage ditch, with a culvert piping, to prevent future expected flooding on a roadway, and totals about \$5,000. *See* Early Aff., Ex. C, ¶ 6. On the higher end, road erosion control can include re-grading of the road, which requires a dozer blade and other machines for crowning and pitching, at approximately \$10,000.<sup>2</sup> *Id.* ¶7.

However, Plaintiffs should not be required to post this full amount—whether on the low or high end of the estimate range. Rather, they should be required to post just a fraction of the low-end estimate to redress any possible—but unlikely—damage to Everest incurred by Defendants during the injunction period, given: Plaintiffs’ and the local community’s *occasional* use of, and thus unlikely damage to, Everest; Defendants’ own *frequent* use and thus, wear of Everest; the absence of damage caused by Plaintiffs and the local community to Everest in the record; Plaintiffs’ past efforts to maintain Everest; and Defendants’ rejection of Plaintiffs’ and other community members’ past offers to maintain the Cemetery, free of charge. *See supra* pp. 3-6.

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<sup>2</sup> Counsel was only able to obtain a quote from 1 company, ARE Land Management, and as of the date of this filing, awaits responses from the four other companies contacted for rough estimates. Early. Aff., Ex. C, ¶¶5, 8. If the Court wishes, Plaintiffs can supplement this filing with any additional quotes they obtain by the end of this week.

\* \* \* \* \*

In sum, given Plaintiffs' past cost-free efforts to care for Everest, absence of damage to Everest caused by Plaintiffs, Defendants' own frequent wear of Everest each day to reach their homes and land, and low-cost professional road erosion options for Everest, Plaintiffs propose \$1,000 for the security to enter the requested temporary injunction for potential—but unlikely—road damage, pending a trial on the merits, and are prepared to post this amount, per Rule 65(c).

## II. THE GATE ON POPE ESTATES WAY

At the December 16 site visit, the Court requested the identity of the owner of a small metal gate with a lock that sits across the lower end of Pope Estates Way heading towards the cemetery; the ownership of the property on which the gate sits; and the approximate year when the gate was installed. Site Visit to the Big House Cemetery, Dec. 16, 2025. In response, Plaintiffs submit that the gate is on land owned by Plaintiff Sherike Bennett and was installed by Ms. Bennett around 2017 or 2018—over 10 years after she built her home on Pope Estates Way—to prevent hunters from entering her property. Affidavit of Sherike Bennett, attached as Exhibit B, ¶¶ 6, 14. Ms. Bennett also placed another small bamboo barrier at the boundaries of the Cemetery, closer to the Harpers' property, to outline its boundaries and indicate to funeral homes where their hearses and burials should not go. *Id.* ¶ 16.

## CONCLUSION

For the reasons detailed above and in the attached sworn affidavits, in Plaintiffs' arguments at the Court's December 16, 2025 injunction hearing, and in Plaintiffs' July 2025 Motion for Temporary Restraining Order and September 2025 Supplement of the same, Plaintiffs' Motion for Temporary Injunction should be granted, and Plaintiffs should be required to post security of no more than \$1,000 to secure the temporary injunction, per Rule 65(c).

Respectfully submitted,

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